



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193
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www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
KESWICK LAND DEVELOPMENT CORPORATION
FOR
KESWICK MIXED USE DEVELOPMENT
Unpermitted Activity**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Keswick Land Development Corporation, regarding the Keswick Mixed Use Development, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the

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contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

5. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
6. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
7. "Impacts" means results caused by those activities specified in VA Code § 62.1-44.15:20(A).
8. "Keswick" means Keswick Land Development Corporation, a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Keswick Land Development Corporation is a "person" within the meaning of Va. Code § 62.1-44.3].
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" or "Virginia Water Protection Permit" ("VWP") means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
12. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
13. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c)



contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

14. "Property" or "Parcel" means the 164 acre tract of land at the intersection of Lake Anna Parkway (Route 208) and Old Robert E. Lee Drive, in Spotsylvania County, Virginia, owned by Keswick Land Development Corporation.
15. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
16. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
19. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
20. "USACE" means the United States Army Corps of Engineers.
21. "UT" means unnamed tributary (to a larger, named, body of water).
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Keswick Land Development Corporation owns the property. Development of the property is contracted to Collins Construction Services.



2. No VWP permit from DEQ exists for this construction project.
3. On November 15, 2017, Keswick Land Development Corporation provided verbal notification of unauthorized impacts to surface waters as a result of site grading and associated fill on the property. A written statement to the same effect, prepared by Stantec Consulting Services, Inc. ("Stantec") on behalf of Keswick, was received by DEQ on November 28, 2017.
4. Based upon the written statement, construction activities requiring a VWP permit on the property occurred on November 10, 2017. This construction occurred at what will become the Keswick Mixed Use Development and involved permanent impacts to nearby surface waters, i.e., the UT for the Po River, located in the York River Basin, a state water. Stantec reported 692 linear feet and 0.07 acre of permanent unauthorized impact to stream channel and palustrine forested wetlands (PFO), respectively, due to this construction.
5. On November 10, 2017, a Keswick representative notified Collins Construction Services to cease operations involving surface waters outside of work explicitly permitted through the county's utility permit. A map of unauthorized impacts was delivered to DEQ on November 28, 2017.
6. On December 1, 2017, Department staff inspected the Property for compliance with the requirements of the State Water Control Law and the Regulations. The DEQ inspector observed site clearing and grading per the map of unauthorized impacts, as well as four areas of potential stream and wetland impacts associated with the installation of road crossings, totaling an additional 150 linear feet of stream, and 0.02 acre of PFO wetland impact. Based on field observations, total permanent impacts were estimated as 842 linear feet of stream impact, and 0.09 acre of PFO wetland.
7. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit dredging or filling of surface waters without a Permit issued by the Director. Keswick Land Development Corporation does not have a Permit for the above activities.
8. On December 12, 2017, DEQ issued NOV No. 1712-000581 for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
9. On January 16, 2018, Department staff met with representatives of Keswick Land Development Corporation to discuss the violations. Keswick explained the impacts associated with the installation of the utility lines were covered under a NWP 12; therefore, Keswick was under the impression they had a permit for work in all surface waters. There was discussion that the unauthorized impacts resulted from activity beyond what was authorized in the NWP 12 and commencing construction of road crossings and site grading prior to obtaining a permit. At the time of the meeting, Keswick estimated the impacts as 692 linear feet of stream channel, and 0.07 acre of PFO; however, the Keswick's estimates did not include the unauthorized impacts associated with the utility work. Keswick agreed to provide to DEQ maps and



information which offered final details and calculations of all impacts. DEQ informed Keswick they would be required to submit a Joint Permit Application (JPA, includes SPGP and VWP) and have a permit issued before any future surface water impacts required to complete the development could occur.

10. On April 17, 2018 Stantec, on behalf of Keswick, submitted maps and tables quantifying unauthorized impacts taken at the property. These totaled 653 linear feet of impacted stream (548 LF from PG1, and 105 LF from PG4), and 0.07 acre of impacted PFO wetland (0.05 acre from PG1, and 0.01 acre from PG4). After discussions on the inclusion of utility line impacts, it was agreed upon in May of 2018 that the total of unauthorized impacts would be measured as 776 linear feet of stream, and 0.07 acre of PFO wetland.
11. Based on the results of November 28, 2017 letter, the December 1, 2017 inspection, the January 16, 2018 meeting, and the subsequent exchange of information via email and telephone, the Board concludes that Keswick Land Development Corporation has violated 9VAC25-210-50 and Virginia State Water Control Law § 62.1-44.15:20, as described in paragraphs C(1) through C(10), above.
12. In order for Keswick to return to compliance, DEQ staff and representatives of Keswick have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order


Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Keswick, and Keswick agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$32,625 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Keswick shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).



If the Department has to refer collection of moneys due under this Order to the Department of Law, Keswick shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Keswick for good cause shown by Keswick, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV # 1712-000581, dated December 12, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Keswick admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Keswick consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Keswick declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Keswick to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Keswick shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Keswick shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Keswick shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are



occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Keswick. Nevertheless, Keswick agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Keswick has completed all of the requirements of the Order;
 - b. Keswick petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Keswick.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Keswick from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Keswick and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.



13. The undersigned representative of Keswick certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Keswick to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Keswick Land Development Corporation.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Keswick voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7th day of December, 2018.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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Keswick Land Development Corporation voluntarily agrees to the issuance of this Order.

Date: 10/1/18 By: [Signature], President
(Person) (Title)
Keswick Land Development Corporation

Commonwealth of Virginia

City/County of Fredericksburg

The foregoing document was signed and acknowledged before me this 1st day of

October, 2018, by James E. Jarrell, III who is

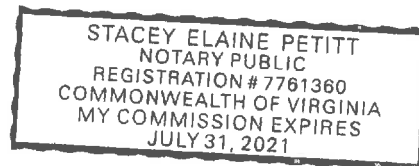
President of Keswick Land Development Corporation, on behalf of
the corporation.

[Signature: Stacey Elaine Pettit]
Notary Public

7761360
Registration No.

My commission expires: July 31, 2021

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Keswick shall immediately cease impacts to state waters and shall not resume such impacts unless authorization from DEQ is granted via a Permit.
2. Not later than 30 days after signature of this Order, Keswick shall submit proof of purchase of 0.14 wetland credit for 0.07 acre of unauthorized impacts to PFO wetland, 662 stream credits for the associated 653 LF of unauthorized stream impacts associated with the subdivision impacts PG1 and PG4, and 175 stream credits for the associated 123 LF of unauthorized impact associated with utility construction impacts (**TOTAL: 0.14 wetland credit, and 837 stream credits**) from a DEQ-approved mitigation bank that is authorized and approved by DEQ to sell credits in the area in which the impacts occurred and has credits available (as released by DEQ) to achieve no-net-loss of existing wetland acreage and no-net-loss of function in all surface waters in accordance with 9 VAC 25-210-116.
3. Unless otherwise specified in this Order, Keswick Land Development Corporation shall submit all requirements of Appendix A of this Order to:

VA DEQ – NRO Regional Office
Attention: Enforcement
13901 Crown Court
Woodbridge, VA 22193

